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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,935	09/25/2003	Christian Schmitt	P03,0376	2040
26574	7590	07/12/2006		EXAMINER SAN MARTIN, EDGARO
SCHIFF HARDIN, LLP PATENT DEPARTMENT 6600 SEARS TOWER CHICAGO, IL 60606-6473			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/670,935	SCHMITT, CHRISTIAN	
	Examiner Edgardo San Martin	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 May 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buettner (US 4,831,655) in view of Olsen (EP 0 988 776).

With respect to claim 1, Buettner teaches a hearing aid device wearable in the ear with a housing comprising at least one acceptance (Fig.3, Items 30 and 32) for pivoted attachment configured to swivel in and swivel out a battery loader (Fig.3), a housing opening (Fig.3, Item 48) through which the battery loader can be swiveled in and swiveled out (Fig.3; Col.2, Line 4 – Col.3, Lines 31); but fails to disclose a stabilization element to stabilize the housing in the area of the housing opening, attached to the housing and at least partially surrounding the housing opening.

On the other hand, Olsen teaches a hearing device (Fig.1) comprising a battery loader (Fig.1, Item 3) and a stabilization element (Figs.2, 6 and 7) to stabilize the housing in the area of the housing opening, attached to the housing (Fig.2) and at least partially surrounding the housing opening (Figs.1, 2, 6 and 7; ¶ [0015] – [0021], [0024] – [0025] and [0033]).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Olsen configuration with the Buettner design

because the Olsen configuration would provide a secure attachment of the battery loader to the housing in addition to provide the electric connections needed to supply energy from the battery to the electronic control system.

With respect to claims 2 – 6, Olsen teaches the limitations described in the claims (Figs.2, 6 and 7; ¶ [0015] – [0021], [0024] – [0025] and [0033]).

Response to Arguments

2. Applicant's arguments filed on May 1, 2006 have been fully considered but they are not persuasive. The Examiner still considers that the patents to Buettner and Olsen teach the limitations described in the claims as described above. The Examiner considers that Olsen inherently teaches a stabilization element (Figs.2, 6 and 7), just because the reference does not clearly establish that it is directly employed as a stabilization element, that does not mean that it would not provide a stabilization function; the Examiner considers that based on the Olsen disclosure the "stabilization element" presented on Figures 2, 6 and 7 implicitly provide a stabilization characteristic; furthermore it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ F.2d 1647 (1987).

In addition, the Examiner considers that the Olsen stabilization element clasps the border area of the housing that surrounds the housing opening as it is clearly shown in figure 2 at 19 and 22, which is a very similar drawing as figure 1 of the current

application, in where it is shown the claimed stabilization element (4) clasping the border area of the housing that surrounds the housing opening (2).

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-2800 ext.37. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martín
Primary Examiner
Art Unit 2837
Class 181
July 8, 2006